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Attorney for the Movants

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:
JJ ARCH LLC,
Debtor.
-----X

Chapter 11
(Subchapter V)
Case No. 24-10381-jpm
Hon. John P. Mastando III
United States Bankruptcy Judge

**MOTION FOR ENTRY OF AN ORDER
SCHEDULING A HEARING ON SHORTENED NOTICE**

40 Neutral LLC (“**40 Neutral**”) and Kay Properties LLC (“**Kay Properties**”) (collectively, the “**Movants**”), by and through their undersigned counsel, respectfully submit this motion (the “**Motion to Shorten Time**”), seeking entry of an order scheduling a hearing on shortened notice in connection with the Movants’ motion [Dkt. No. 23] to: (i) remove the debtor from possession and empower the Subchapter V trustee appointed in this case (“**Trustee**”) to take full control of the debtor pursuant to Sections 1185(a) and 1183(b)(5) of Title 11, United States Code, §§ 101 *et seq.* (the “**Bankruptcy Code**”) or, in the alternative, (ii) expand the powers of the Trustee (similar to those of an examiner) pursuant to Section 1183(b)(2) of the Bankruptcy Code (the “**Motion for Expanded Trustee Powers**”). In support hereof, Movants respectfully state as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this Motion to Shorten Time (and the Motion for Expanded Trustee Powers to which it relates) pursuant to 28 U.S.C. §§157 and 1334. This is a “core” matter pursuant to 28 U.S.C. § 157(b)(2)(A).
2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.
3. This proceeding has been initiated pursuant to Rule 9006(c) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 9077-1 of the Local Bankruptcy Rules for the Southern District of New York (“**Local Rules**”).

BACKGROUND

4. On March 7, 2024, (the “**Petition Date**”), Jeffrey Simpson, on behalf of the Debtor, filed the instant voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “**Subchapter V Proceedings**”).
5. The Motion for Expanded Trustee Powers details the need for relief in this case, and why this Court is the only venue that can provide meaningful relief.

6. Any delay in hearing the Motion for Expanded Trustee Powers could prejudice the rights of Movants and cause further deterioration in the value of estate assets and recoveries that would inure to the benefit of Movants.

7. Movants respectfully submit that scheduling a hearing on shortened notice to consider the Motion for Expanded Trustee Powers is necessary to preserve the value of estate assets.

8. Considering the extreme opposing positions taken by each of the Debtor’s principals (Simpson and Chassen), and in light of the harm being done to creditors and the estate as a result, Movants respectfully request that the Motion for Expanded Trustee Powers be heard before the April 5, 2024 hearing date presently scheduled for a motion to dismiss these chapter 11

proceedings (filed by Chassen). Movants respectfully submit that permitting the Trustee a period of time in which to conduct an independent investigation into the matters at issue in this case, which can be granted through the relief sought in the Motion for Expanded Trustee Powers, might inform the Court's analysis on the motion to dismiss.¹

9. The Federal Rules of Bankruptcy Procedure provide for a shortening of time under certain circumstances. Federal Rule of Bankruptcy Procedure 9006(c) provides:

(c) Reduction.

(1) In General. Except as provided in paragraph (2) of this subdivision, when an act is required or allowed to be done at or within a specified time by these rules or by a notice given thereunder or by order of court, the court for cause shown may in its discretion with or without motion or notice order the period reduced.

(2) Reduction Not Permitted. The court may not reduce the time for taking action under Rules 2002 (a)(4) and (a)(8), 2003(a), 3002(c), 3014, 3015, 4001(b)(2), (c)(2), 4003(a), 4004(a), 4007(c), 8002, and 9033(b).

Fed. R. Bankr. P. 9006(c)

10. Movants respectfully submit that sufficient cause exists for scheduling a hearing on shortened notice, to consider the Motion for Expanded Trustee Powers and refers the Court to the Declaration of Jeffrey Miller, Esq. Pursuant to Local Bankruptcy Rule 9077-1 in support of the relief sought herein (**"9077-1 Affidavit"**).

¹ In addition, to the extent that the Trustee identifies creditors who were not listed in the Debtor's initial case filings and those creditors are given a period of time to receive notice of this chapter 11 case and make an appearance, creditors might take action in the nature of filing an involuntary petition to the extent that the Court finds dismissal appropriate. Just a few days ago, on March 20, 2024, a creditor matrix was filed that included additional creditors that will now get notice, including Movants. Notably, the updated matrix was filed the day after Movants filed a notice of appearance. Permitting a short period of time for the Trustee to ensure that proper notice has been given to all required parties, likewise might help inform the Court's analysis and at the same time provide creditors an opportunity to be heard in a meaningful way. This case should be about more than just two principals willing to destroy value as collateral damage in their ongoing disputes.

CONCLUSION

WHEREFORE, Movants respectfully request consideration of the Motion on shortened notice, for which no prior request for the relief requested has been made to this or any other Court, together with such other and further relief and this Court deems to be just and proper under the circumstances.

Dated: Uniondale, New York
March 22, 2024

WESTERMAN BALL EDERER MILLER
ZUCKER & SHARFSTEIN LLP

By: /s/ Jeffrey A. Miller

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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Chapter 11
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Case No. 24-10381-jpm
Hon. John P. Mastando III
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DECLARATION OF JEFFREY A. MILLER, ESQ.,
PURSUANT TO LOCAL BANKRUPTCY RULE 9077-1

Jeffrey A. Miller, Esq., declares, under penalty of perjury, pursuant to 28 U.S.C. § 1746 as follows:

11. I am a partner with the firm of Westerman Ball Ederer Miller Zucker & Sharfstein, LLP, counsel for 40 Neutral LLC (“40 Neutral”) and Kay Properties LLC (“Kay Properties”) (collectively, the “Movants”), creditors and parties-in-interest in the above-captioned Subchapter V Chapter 11 bankruptcy proceedings of JJ Arch LLC (the “Debtor”).

12. I submit this declaration in support of the accompanying motion (the “Motion to Shorten Time”), pursuant to Local Bankruptcy Rule 9077-1(b), for entry of an order scheduling a hearing on shortened notice for the Movants’ motion to: (i) remove the debtor from possession and empower the Subchapter V trustee appointed in this case (“Trustee”) to take full control of the debtor pursuant to Sections 1185(a) and 1183(b)(5) of Title 11, United States Code, §§ 101 *et seq.* (the “Bankruptcy Code”) or, in the alternative, (ii) expand the powers of the Trustee (similar

to those of an examiner) pursuant to Section 1183(b)(2) of the Bankruptcy Code (the “**Motion for Expanded Trustee Powers**”).

13. Movants seek relief on an emergency basis for several reasons.

14. As is argued in the Motion for Expanded Trustee Powers, the infighting between the principals of the Debtor has caused tremendous deterioration of estate assets, and risks further if not complete erosion of substantial equity value in the Property (as defined in the Motion for Expanded Trustee Powers).

15. This Court is the one place where a rational process for protecting, extracting and realizing upon the value that still exists in the Property can be put in place, and the Trustee, with the expanded range of power sought through the Motion for Expanded Powers, is the one person or representative who can bring a rational, appropriate approach to that process.

16. Delay will cause further harm. Because the Debtor has an indirect ownership interest in the Property, a sale of the Property inures to the benefit of the estate. Moreover, to the extent that Movants recover from a sale of the Property, it may mitigate some of the claims Movants have against the Debtor’s estate.

17. The relief sought herein and in the Motion for Expanded Trustee Powers has not previously been sought by Movants.

Dated: Uniondale, New York
March 22, 2024

/s/ Jeffrey A. Miller
Jeffrey A. Miller

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

JJ ARCH LLC,

Debtor.

Chapter 11
(Subchapter V)

Case No. 24-10381-jpm

Hon. John P. Mastando III
United States Bankruptcy Judge

X

**ORDER GRANTING MOTION FOR AN ORDER SCHEDULING
A HEARING ON SHORTENED NOTICE TO CONSIDER THE MOTION
TO GRANT EXPANDED POWERS TO THE SUBCHAPTER V TRUSTEE**

Upon the motion (the “Motion to Shorten Notice”) [ECF No. __] of 40 Neutral LLC (“40 Neutral”) and Kay Properties LLC (“Kay Properties”) (collectively, the “Movants”), by and through their counsel, for entry of an order scheduling a hearing on shortened notice (the “Motion”) to consider the Movants’ motion [ECF No. 23] to: (i) remove the debtor from possession and empower the Subchapter V trustee appointed in this case (“Trustee”) to take full control of the debtor pursuant to Sections 1185(a) and 1183(b)(5) of Title 11, United States Code, §§ 101 *et seq.* (the “Bankruptcy Code”) or, in the alternative, (ii) expand the powers of the Trustee (similar to those of an examiner) pursuant to Section 1183(b)(2) of the Bankruptcy Code (the “Motion for Expanded Trustee Powers”) and the Declaration of Jeffrey A. Miller, Esq., pursuant to Local Rule 9077-1 in support of the Motion.; and after due deliberation; it is hereby:

ORDERED, that a hearing to consider the Motion for Expanded Trustee Powers shall be held on _____, 2024 at _____; and it is further

ORDERED, that counsel for Movants and counsel for the Debtor are directed to appear at the hearing in person before the Honorable John P. Mastando III, United States Bankruptcy Judge, Courtroom 501, United States Bankruptcy Court. Manhattan Division, One Bowling Green, New

York, NY 10004, with the option to appear remotely granted to the Office of the United States Trustee, the Subchapter V Trustee, any Notices of Appearance and creditors; and it is further

ORDERED, that all parties must register their appearance by _____, 2024 at 4:00 p.m. with eCourt Appearances. Parties who have a CM/ECF account, may access eCourt Appearances in the “Utilities” menu after logging into CM/ECF. Parties who do not have a CM/ECF account, may access eCourt Appearances on the Court’s website at <https://ecf.nysb.uscourts.gov/cgi-bin/nyebAppearances.pl>; and it is further

ORDERED, that notice of the Hearing shall be sufficient if a copy of this Order and the Motion for Expanded Trustee Powers, with exhibits, are served by email on or before March __, 2024 at 5:00 p.m. on each of the Debtor, the U.S. Trustee, the Subchapter V Trustee, all parties having filed Notices of Appearance, and, where email is available or can be ascertained, the Debtor’s twenty largest unsecured creditors; and it is further

ORDERED, that objections to the Motion shall be made in writing, stating with specificity the basis or bases on which such party in interest objects to the within Motion, filed with the Bankruptcy Court at the Court’s website www.nysb.uscourts.gov (Password and Login Required) and must be served by email upon (i) Westerman Ball Ederer Miller Zucker & Sharfstein, LLC, 1201 RXR Plaza, Uniondale, New York 11556, Attn: Jeffrey A. Miller, Esq., jmiller@westermanllp.com and William C. Heuer, Esq., wheuer@westermanllp.com (ii) the Office of the United States Trustee, One Bowling Green, New York, NY 10004, Attn: Brian Masumoto, Esq., nysbnotice@gmail.com and brian.masumoto@usdoj.gov; (iii) Eric Huebscher, Subchapter V Trustee, Huebscher & Co., 301 East 87th Street, #20E, New York, NY 10128 ehuebscher@huebscherconsulting.com, and (iv) all other parties who have filed notices of

appearance in this Subchapter V Chapter 11 case, so as to be filed and served no later than March _____, 2024 at 4:00 p.m.; and it is further

ORDERED, that service of the Motion and exhibits and a copy of this Order in accordance with the foregoing provisions hereof shall be deemed good and proper service, which proof of service shall be filed with the Bankruptcy Court prior to the Hearing; and it is further

ORDERED, that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

Dated: New York, New York
March __, 2024

HON. JOHN P. MASTANDO III
UNITED STATES BANKRUPTCY JUDGE